necessity for this protection ceased on his return to America, the presumption ceased with it. The court's interpretation of the statute accurately follows its words, and appears to be unquestionably the proper one.

RECOVERY FOR UNAUTHORIZED REPETITION OF SLANDER BY THIRD PERSONS.—In actions for defamation, it has been settled by the courts and agreed by the text writers that the plaintiff cannot receive compensation for the damage which he sustains by reason of the repetition of the defamation by the hearer to another person, whether the words be actionable *per se*[1] or only on proof of special damage.[2] But to this generally recognized rule there are equally well recognized exceptions. The originator of the slander or libel is responsible for its repetition if he authorizes it,[3] or if he intends it,[4] or if the hearer is under such a duty to repeat it that the repetition is privileged.[5] Under the general rule, a recovery is denied for the repetition sometimes on the ground that to allow it would be to create a double liability, giving the plaintiff two actions for the same injury, one against the originator and one against the repeater;[6] for the repeater, unless his repetition is privileged, is at all events responsible for the consequences of his utterance.[7] But the reason usually advanced is that the repetition is not a natural, proximate, and reasonable result of the original utterance, but is an independent wrong committed by a third person, for which that third person is alone responsible.[8]

The first ground assigned in support of the general rule is hardly tenable. It amounts in effect to this: the first publisher is held liable, if the repeater is exempt; and the first publisher is exempt, if the repeater is liable. But the liability of one person cannot depend upon the non-liability of another. The responsibility of the originator

[1]Prime *v.* Eastwood (1877) 45 Iowa 640; Clifford *v.* Cochrane (1882) 10 Ill. App. 570; see Adams *v.* Cameron (Cal. 1915) 150 Pac. 1005.

[2]Odgers, Libel and Slander (5th ed.) 172, 177; Ward *v.* Weeks (1830) 7 Bing. 211; Age-Herald Pub. Co. *v.* Waterman (1914) 188 Ala. 272, 66 So. 16.

[3]Bond *v.* Douglas (1836) 7 C. & P. 626; Queen *v.* Cooper (1846) 8 Q. B. 533; Adams *v.* Kelly (1824) Ry. & Moo. 157.

[4]Ecklin *v.* Little (1890) 6 T. L. R. 366; Whitney *v.* Moignard (1890) 24 Q. B. D. 630; Odgers, Libel and Slander (5th ed.) 177.

[5]Clerk and Lindsell, Torts (6th ed.) 618, 673; Derry *v.* Handley (1867) 16 L. T. R. [N. S.] 263; but *cf.* Parkins *v.* Scott (1862) 6 L. T. R. [N. S.] 394.

[6]Mills *v.* Flynn (1912) 157 Iowa 477, 137 N. W. 1082; see Cates *v.* Kellogg (1857) 9 Ind. 506.

[7]In the Earl of Northampton's Case (1613) 12 Rep. 132, it was laid down as the rule that if at the time of his repetition the repeater of the defamatory words named the author, the former was not liable to any action. The reason upon which the rule was based was that, by naming the author of the slander, the repeater gave to the injured party the opportunity to bring an action against him. But the doctrine was criticized in later cases, and was finally repudiated in McPherson *v.* Daniels (1829) 10 B. & C. 263. It is now the law that the repeater of the slander cannot defend on the ground that, at the time of his utterance, he named the person from whom he heard it. Newell, Slander and Libel (3rd ed.) § 435 *et seq.*; see 15 Columbia Law Rev. 361.

[8]Terwilliger *v.* Wands (1858) 17 N. Y. 54; Gough *v.* Goldsmith (1878) 44 Wis. 262; Ward *v.* Weeks, *supra*.

of the slander should not be determined by deciding whether the repetition is or is not justifiable.[9] Nor is there anything obnoxious in allowing a plaintiff to hold several persons responsible for the injury he has sustained. Cases of such double liability are not infrequent in the law of torts.[10] Whether the first publisher is responsible for the repetition must be determined by the rule ordinarily applied in tort actions, that a wrongdoer is responsible for the natural and ordinary consequences of his wrongful act, but not for the remote.[11] When one person utters a slander against another, the frailty of human nature is such that it would be, indeed, a highly unnatural result if the hearer did not repeat the scandal. The publisher of any defamation, as a reasonable man, may well anticipate such repetition. On principle, therefore, the first publisher of a defamatory statement is liable for the repetition of that defamation which follows as a natural and proximate result of the first publication. Such is the decision of the court in the recent case of *Southwestern Tel. & Tel. Co.* v. *Long* (Tex. Civ. App. 1916) 183 S. W. 421. Here the words alleged as slanderous were actionable *per se,* since they imputed unchastity to the plaintiff.[12] The distinction which the court made, however, between cases of slander *per se* and those in which special damages must be shown, in which latter case it was said there could be no recovery for damages resulting from the repetition, seems hardly sound; for there is even greater likelihood of repetition in the latter case than in former. Though the result reached in this decision is opposed to the great weight of authority, there are a few cases which support it.[13] Since ordinarily in tort actions it is a

[9]Townshend, Slander and Libel)4th ed.) 274 *et seq.*; Odgers, Libel and Slander (5th ed.) 415; see Elmer *v.* Fessenden (1890) 151 Mass. 359, 24 N. E. 208.

[10]4 Sutherland, Damages (3rd ed.) § 1222. Mr. Sutherland gives this example: A and B are engaged to be married. C slanders B, as a result of which A breaks his promise. B may sue A for breach of promise, or B may sue C for slander. If B sues C, B may recover damages which include compensation for A's breach of promise.

[11]"*In jure non remota causa sed proxima spectatur.*" Bacon, Maxims of the Law, Reg. I. The intervening wrong of a third person does not necessarily discharge the first wrongdoer from liability. Lane *v.* Atlantic Works (1872) 111 Mass. 136.

[12]At common law, the imputation of unchastity to a female was not actionable, unless special damage was shown, Brooker *v.* Coffin (N. Y. 1809) 5 Johns. *188; Pollard *v.* Lyon (1875) 91 U. S. 225, because fornication was an offense unknown to the law and cognizable only in the ecclesiastical courts. Palmer *v.* Thorpe (1578) 4 Rep. 20; Davis *v.* Gardiner (1578) *id.* 16. Though that rule was strongly criticized, Graves *v.* Blanchett (1704) 6 Mod. *148; Speight *v.* Gosnay (1891) 60 L. J. Q. B. 231, and called "unsatisfactory" and even "barbarous", *per* Lords Campbell and Brougham, in Lynch *v.* Knight (1861) 9 H. L. C. *577, at pp. *593, *594, it was not changed in England until 1891, when the Slander of Women Act, 54 & 55 Vict. c. 51, made the words actionable *per se.* In the United States, the words are generally actionable *per se,* either by statute or by decision. Burdick, Torts (3rd ed.) § 368.

[13]Davis *v.* Starrett (1903) 97 Me. 568, 576, 55 Atl. 516, 519; Zier *v.* Hofflin (1885) 33 Minn. 66, 21 N. W. 862; Merchant's Ins. Co. *v.* Buckner (1899) 98 Fed. 222; Fitzgerald *v.* Young (1911) 89 Neb. 693, 132 N. W. 127; see Clerk and Lindsell, Torts (6th ed.) 674; 4 Sutherland, Damages (3rd ed.) § 1222; *cf.* Riding *v.* Smith (1876) 1 Ex. D. 91, 94; Burdick, Torts (3rd ed.) § 350.

question for the jury whether a particular consequence is the natural and proximate result of the wrongdoer's act,[14] so too, in these cases of defamation, it might well be left to the jury to say whether the repetition was the natural and proximate result of the first publication.[15]

With all this strict insistence by the majority of courts on the defendant's non-liability for repetitions, there is this apparent inconsistency in the cases. Where the words are actionable *per se*, the amount of damages which the plaintiff may recover is in the discretion of the jury, which compensates the plaintiff for the loss to his reputation;[16] but this loss of reputation results ordinarily through repetitions by third parties. Then, too, in some cases of defamation where special damage is alleged to the plaintiff's business, the plaintiff is allowed to prove and recover for the general loss of business;[17] but, again, this general loss of business can come only through repetitions. The decision in *Southwestern Tel. & Tel. Co.* v. *Long* obviates this logical difficulty, and reaches a conclusion which, though opposed to the great weight of the decided cases, is entirely consistent with the principles of justice and of law.

MANDATORY INJUNCTIONS, AND THEIR EFFECT PENDING APPEAL.—The jurisdiction of the court of chancery by way of mandatory injunction seems to have been recognized early in the development of the equitable remedy. Lord Hardwicke, in a case which has apparently been overlooked or underestimated, directly commanded the defendant, upon final decree, to remove a wall which he had erected in violation of the petitioner's easement of light;[1] in a later case, he made a similar order on motion.[2] But the courts have preferred to regard as the leading decision on the subject a case in which the mandatory nature of the injunction granted is very doubtful.[3] In that case the order, made on motion, was couched in the form of a prohibition on the

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[14]Lane *v.* Atlantic Works, *supra.*

[15]Bigley *v.* National Fidelity & Casualty Co. (1913) 94 Neb. 813, 144 N. W. 810; Zier *v.* Hofflin, *supra*; Fitzgerald *v.* Young, *supra.*

[16]Melcher *v.* Beeler (1910) 48 Colo. 233, 110 Pac. 181; Burt *v.* McBain (1874) 29 Mich. 260; 4 Sutherland, Damages (3rd ed.) § 1206.

[17]Evans *v.* Harries (1856) 1 H. & N. 250; Riding *v.* Smith, *supra*; *cf.* Ratcliffe *v.* Evans (1892) 2 Q. B. 524; but see Rutherford *v.* Evans (1829) 4 C. & P. 74. In Clarke *v.* Morgan (1877) 38 L. T. R. [N. S.] 354, the court pointed out the logical difficulty involved, and expressed the hope that a court of ultimate appeal would consider the question.

[1]"Upon the whole, I must decree the wall erected by the defendant be pulled down." East India Co. *v.* Vincent (1740) 2 Atk. *83.

[2]Ryder *v.* Bentham (1750) 1 Ves. Sr. *543. The Chancellor, before hearing the argument, observed that "he never knew an order to pull down anything on motion: it is sometimes, though rarely, done on a decree." But, after argument: "Let the parties therefore by consent proceed to a trial at law in case by the plaintiff, for stopping his lights: and the defendant to pull down the scaffold, or polls and boards already raised, and be injoined from building or erecting, whereby any of plaintiff's lights may be obstructed, till after trial had."

[3]Robinson *v.* Lord Byron (1785) 1 Bro. C. C. 588.